

Sunset Public Hearing Questions for
Child Care Agency Licensing Board of Review
Created by Section 71-3-510, *Tennessee Code Annotated*
(Sunset Termination Date June 2019)

1. Please provide a brief introduction to the committee, including information about its purpose, statutory duties, and administrative attachment.

The Child Care Agency Licensing Board of Review sits as a jury in in civil enforcement actions initiated by the Department of Human Services and the Department of Children's Services against licensed child care providers. The board proceedings are presided over by a state administrative law judge who has been assigned to the case by the office of the Secretary of State. The board has one primary staff person – a Recording Secretary, and the Recording Secretary schedules the hearings, makes arrangements for the hearing facilities, and coordinates board member participation in the hearings. The Recording Secretary is an employee of the Department of Human Services.

2. Provide a list of the five stated regular board members. For each member, indicate how the member's presence complies with Section 71-3-510(a), *Tennessee Code Annotated*.

Danielle Barnes – DHS Commissioner – designee to be appointed from the childcare standards committee members(vacant)

Bonnie Hommrich – DCS Commissioner – designee Sandra Wilson

Candice McQueen – DOE Commissioner – designee Misty Moody

John Dreyzehner – DOH Commissioner – designee Lynette Hicks

Linda O'Neal – Tennessee Commission on Children and Youth- designee Richard Kennedy

These members or their designee represent the various departments as specified in the statute.

3. Provide a list of individuals currently in the pool of at-large representatives. Section 71-3-510(a), *Tennessee Code Annotated*, specifies that the pool will consist of up to twelve at-large representatives to be selected by the five stated board members.

Sherry Jo Anderson, Kay Boeckman, Lynn Deal, Kathy Ennis, Elizabeth "June" Keel, Bobette Thompson, Janice Zimmerman.

4. Are there any vacancies on the board? If so, what steps have been taken to fill those vacancies?

The DHS Commissioner designee is currently vacant as the prior designee recently moved out of state. A list of members of the Childcare Standard Committee has been obtained to make a selection of a member to serve on this board. There are currently five (5) at-large vacancies. Four (4) resumes of potential at-large

members have been obtained and forwarded to regular board members for discussion and selection(s) of at-large candidates. The same process will apply until all vacancies are filled.

5. How many times did the board meet in the last two years? How many members were present at each meeting? Were at-large members present at each board meeting?

July 1, 2016 to May 21, 2018

Forty-seven (47) hearings were scheduled during this time period and the board met to hear all of these matters. All board proceedings are recorded by a certified court reporter. A minimum of five (5) members were present at each hearing, including at-large members.

6. What per diem or travel reimbursement do members receive? How much was paid to board members during the last two years?

Members receive reimbursement for travel expenses at the standard reimbursement rate (i.e. food, lodging, mileage) established by the Department of Finance and Administration.

Travel Expenses for the board during state fiscal year 2017 were \$484.68.

As of May 21, 2018, the expenditures for state fiscal year 2018, is \$1,055.38.

7. What were the board's revenues and expenditures for the last two years? Does the board carry a balance and, if so, what is the total of that balance? If expenditures have exceeded revenues and the board does not carry a balance, what was the source of the revenue for excess expenditures?

The board does not generate any revenue. Expenses for this period were limited to reimbursement for travel, meals, and lodging at the rate established by Finance & Administration.

8. How does the board ensure that it is operating in an impartial manner and that there is no conflict of interest?

Prior to the hearing, the recording secretary only provides the board members with the location and time of hearing. No additional information is given to the board members prior to the hearing. If a board member knows the provider or about the case they disqualify themselves from hearing the case prior to the case proceeding upon judicial questioning about whether any of the members have prior knowledge of the case or the provider at the beginning of the hearing. The hearing must comply with all requirements of the Administrative Procedures Act, which is overseen by the assigned Administrative Law Judge. Efforts are made to always

have an additional board member available in case a member is disqualified at the start of a hearing.

9. Has the board promulgated rules? If yes, please cite the reference.

No, the board has no statutory authority to promulgate rules.

10. Is the board subject to Sunshine Law requirements (Section, 8-44-101, *Tennessee Code Annotated*) for public notice of meetings, recording of minutes, and public access to minutes?

The board is not subject to the TN Open Meetings Act as the board does not determine public policy or make determinations relative to public business. Its records, however, are subject to the TN Administrative Procedures Act because it hears “Contested Cases” under the Act. A complete record of each hearing is therefore maintained as a public record and the hearing location is open to the public similar to judicial proceedings.

11. Please describe the board’s appeal process related to child care agency operators, including factors the board considers in deciding appeals.

When the Department serves an order on a provider the order includes a certificate of service and the specific date of service. The provider has ten days from date of service to appeal the action. When the provider contacts the Department to request an appeal the recording secretary confirms that the request for appeal was within the required time frame, and then initiates the process to schedule the hearing. Tenn. Code Ann. § 71-3-509 requires that hearings be held within a set number of days from the date of service. Civil Penalty appeals must be heard within 90 days of the date of service, and denials and revocations must be heard within 30 days of the date of service.

When hearing a case, the board engages in a fact finding mission to determine if the evidence presented is sufficient to meet or overturn the Department’s burden of proof to legally justify its actions. In doing so, the board evaluates the evidence to determine if the licensing rules and procedures of the Department were properly executed. Evidence is considered in accordance with the requirements established by the Administrative Procedures Act.

12. How many appeals pertaining to denial of license applications did the board hear in the last two years? What were the results of those appeals (e.g., department’s actions sustained or overturned)? In how many cases did the applicant appeal the Board of Review’s decision to the Chancery Court as authorized in Section 71-3-510(h), *Tennessee Code Annotated*? What were the results as they pertain to the board’s actions?

Eighteen (18) denial cases were scheduled to be heard by the board during the past two (2) calendar years. The board upheld seven (7) of those denials, four (4) were resolved by agreed orders, two (2) appeals were withdrawn, and two (2) were voluntarily dismissed. Three (3) cases are currently pending with hearings scheduled through July 25, 2018. One (1) case has been appealed to Chancery Court.

13. How many appeals pertaining to revocation of licenses did the board hear during the last two years? What were the results of those appeals (e.g., department's actions sustained or overturned)? In how many cases did the licensee appeal the Board of Review's decision to the Chancery Court as authorized in Section 71-3-510(h), *Tennessee Code Annotated*? What were the results as they pertain to the board's actions?

Nine (9) revocation cases were scheduled to be heard before the board during the past two calendar years. The board upheld one (1) revocation, two (2) were resolved by agreed order, two (2) cases were dismissed, and one (1) was withdrawn. The board elected to change an agency's case to civil penalties, and restrict the ability to provide transportation for two (2) years. Another agency was given civil penalties and six (6) months probation in lieu of the requested revocation, and a third agency was placed on probation for six (6) months instead of the agency's license being revoked. No license revocation matters were appealed to Chancery Court.

14. How many appeals pertaining to the imposition of civil penalties imposed by the Department of Human Services did the board hear during the last two years? What were the results of those appeals? In how many cases did the licensee appeal the Board of Review's decision to the Chancery Court as authorized in Section 71-3-510(h), *Tennessee Code Annotated*? What were the results as they pertain to the board's actions?

There were twenty (20) civil penalty cases scheduled to be heard by the board during this period. One (1) civil penalty was upheld, six (6) were resolved by agreed orders, five (5) matters were withdrawn, and four (4) cases were dismissed. Four (4) cases are currently pending with hearings scheduled through July 11, 2018. No civil penalty cases were appealed to Chancery Court during this timeframe.

15. Has the board heard all cases within the time guidelines mandated in Section 71-3-509(d)(4), *Tennessee Code Annotated*? If not, why not?

All cases have not been heard within timeframes. The timeframe for hearing denials or revocations is thirty (30) calendar days from the date of service. In many instances, nearly ten (10) to twelve (12) days have already elapsed before the Department is notified that the provider has requested a hearing. Therefore, it is often difficult to make all the arrangements to convene the board and schedule the case for a hearing within the thirty (30) day timeframe. Additionally, if the provider obtains counsel close to the date the hearing is scheduled, the hearing is often

continued. Scheduling is also difficult due to the availability of administrative law judges to preside over the appeal—currently, the Department has an administrative law judge scheduled twice a month to hear any pending board matters. All hearings are scheduled for the first available date upon receipt of appeal.

16. Describe any items related to the board that require legislative attention and any proposed legislative changes.

None known.

17. Should the board be continued? To what extent and in what ways would the absence of the board affect the public health, safety, and welfare of Tennessee citizens?

Yes. The board provides an opportunity for child care providers to appeal licensing actions initiated by the Department of Human Services. The board provides an increased level of knowledge and subject matter expertise in reviewing the action so the Department. The board is uniquely qualified to make informed decisions with regard to child care providers and agency enforcement actions. Informed decisions relative to public safety and the welfare of children in child care is in the best interest of all Tennesseans and helps to build a thriving Tennessee.

18. Please provide a list of current board staff.

The duties of Recording Secretary are currently assigned to a Legal Assistant, as a function of their regular job, in DHS Office of General Counsel. Current legal assistants rotate the duties of Recording Secretary as follows:

- **Amy Weaver**
- **Alexis Jones**
- **Jocelyn Bates**

19. Please provide a list of all board contracts, detailing each contractor, the services provided, and the amount of the contract.

No such contracts exist.